he felt that the alterations did not alter the character and identity as existed before 1948 which he described as merely assessorial alterations. He listed out in his report the various renovations and alterations. On the ground floor, there was a timber partition dividing the open space in the open hall into rooms. The timber staircase was constructed to a gentle slope. However, the wall and floor finishes with coloured tiles remained the same. There was also a bathroom facility constructed in the open space area and a new W.C. was constructed directly opposite the original place.

On the first floor, alterations were done to the rooms which were partitioned into a master bedroom, a dressing room and another room. Originally, it had only a large master bedroom and a small size room. The original passage way of 8 feet wide was increased to 11 feet wide. The space which was originally used for kitchen and open terrace with a parapet wall has now been walled up and completely covered by a lean-to roof. The original bathroom has been removed and relocated to the main wall of the building and the rest of the space has been converted into a kitchen space. The floor has been relaid and the wall enclosing the kitchen area has become an extension of the parapet to include new fixed glass panel windows. The floor finish is of mosaic tiles. According to P.W.3, there was no apparent change to the roof structure except changes to the roofing materials which he said were inevitable because of pre-war buildings.

It is clear to me from the evidence adduced that the alterations and renovations were carried out after 1948 as a result of World War II bombing. However, the bombing did not destroy the building completely. It merely affected the roof and back part of the premises. I also accept the evidence of P.W.3 who listed out the alterations, additions and renovations which were carried out. Applying for myself the test laid down in *Krishna Sreedhara Panicka's case i.e.* the degree of change affected by such alterations and renovations, in my judgment, they have not altered the physical condition of the building as existed before 1948. Whatever alterations carried out was merely to make the premises habitable after it was partly destroyed by the bombings. Although the defendants have not adduced any evidence of the actual repairs done, from the evidence of P.W.3, I am satisfied that the changes which had taken place in the premises were not of a substantial character to effect the general structure of the said premises.

For the above reasons, my answer to the question earlier posed is that the said premises is still a controlled premises within the meaning of the Control of Rent Act 1966.

As it is the plaintiff's case that he is a protected tenant under the Act he shall be entitled to costs of these proceedings. Counsel, however, agreed on the amount for "getting-up." The rest of the items will be taxed by the proper officer of the Court.

Order accordingly.

Solicitors: *Sharma & Co.; Shan & Gooi.*

ZULKIFLI BIN HASHIM v. ISMAIL BIN MOHAMED REJAB & ANOR.

[O.C.J. (Lim Beng Choon J.) July 7, 1986]

[Alor Setar – Kedah Civil Suit No. 41 of 1981]

Road Traffic – Negligence – Excessive speed along busy road – Defendant motorist should be more careful when passing by bus stop.

Tort – Negligence – Road accident – Liability – School boy knocked down by car while crossing road – Excess speed along busy road – Motorist 70% liable.

The plaintiff, an infant, brought this action by his father as next of friend, for damages for personal injuries sustained by him as a result of a road traffic accident. The plaintiff's version of the events is that on October 24, 1978 he attended the afternoon class at Syed Omar Secondary School, Alor Setar. After school, he intended to catch a bus at Jalan Darulaman. While crossing the road to catch the bus which was on the right side of the road, he was knocked down by the first defendant's car. The evidence of the first defendant is that he suddenly saw the plaintiff rushing out from a gap between 2 buses which were then parked at a bus-stop on the left side of the road. This bus-stop was almost directly facing the bus-stop on the right side of the road where the plaintiff had to catch his bus to take him home. The defendant further alleged that he was driving at that time about 20 m.p.h. and did apply his brake but could not avoid hitting the plaintiff.

Held: in the circumstances in this case the first defendant is very much more to blame for the accident than the plaintiff since he was driving at an excessive speed along a busy road and he should have kept a proper look-out and should not relax his observation for the consequences could well be disastrous. The need for him to be more careful applied particularly when he was passing a bus stop on his side of the road and there were many people embarking and

disembarking from the two buses at the bus stop. The first defendant is 70% liable and the plaintiff is 30% liable.

Case referred to:

(1) *Baker* v. *Willoughby* [1970] A.C. 467, 490.

CIVIL SUIT.

Baldev Bhar for the plaintiff.

Mohamed Noor bin Hj. Abdullah (State Legal Adviser, Kedah) for the defendants.

Cur. Adv. Vult.

Lim Beng Choon J.: The plaintiff, an infant, brought this action by his father as next of friend, for damages for personal injuries sustained by him as a result of a road traffic accident. At the onset of the proceeding, both the learned Legal Adviser representing the defendants and the learned counsel for the plaintiff agreed and requested this court to hear and determine the liability issue leaving the issue of quantum of damages to be assessed later. The reason was because a necessary witness of the plaintiff was not available to testify at the hearing regarding the extent of the injuries sustained by the plaintiff as a result of the accident.

The evidence of the plaintiff was that on October 24, 1978 he was attending the afternoon class at Syed Omar Secondary School, Alor Setar ("the School"). When school was over his friend who was riding a bicycle gave him a lift to the front of the Alor Setar General Hospital ("the Hospital"). The Hospital is on the left side of Jalan Darulaman, as one faces Alor Setar town. In order to catch the bus to take him home to Titi Gajah, the plaintiff had to cross to the right side of Jalan Darulaman to a bus-stand located on that side of the road. Jalan Darulaman has a cement divider at the centre of the road dividing the road into the two sides. The side in front of the Hospital, the left side, as one faces Alor Setar Town, is for the use of vehicles travelling towards the direction of Alor Setar Town and the other side is meant for the use of vehicles travelling in the opposite direction. Each side of Jalan Darulaman is again sub-divided into 2 lanes by a white line drawn on the middle of each side of the road. According to the plaintiff, after he arrived in front of the Hospital he saw that the bus which he wanted to catch had just arrived. He then started to cross over to the right side to catch the bus. Before he did so he said he looked to the right for vehicles and he saw the motorcar driven by the 1st defendant which was then "3 telephone posts away," that is to say about 132 feet away. According to him he proceeded to cross over to the centre cement divider but upon reaching the white line on the middle of the left side of Jalan Darulaman, he saw the 1st defendant's car about 66 feet away. So he stopped at the middle white line but nevertheless the 1st defendant's car collided into him. The plaintiff also called another witness PW2 who said he saw how the accident occurred. But his evidence shows quite clearly that he did not really see the accident when it took place. His evidence merely shows that he had a fleeting glance of the plaintiff crossing the left side of the road to the middle white line. It was only when he heard the sound of the collision did he realise that the plaintiff was knocked down by the 1st defendant's motorcar. According to him the car was travelling about 60 k.p.h. at the material time. How he arrived at that conclusion is somewhat puzzling. His evidence appears to be riddled with assumptions rather than facts.

The evidence of the 1st defendant was that on the day in question after leaving his employer at the Kedah Golf Club, he proceeded in the direction of Alor Setar Town. He was then driving his motorcar on the left side of Jalan Darulaman and upon coming near to the Hospital he said he stopped his car and parked it partly on the pavement off the edge of Jalan Darulaman and partly on the road itself. Again according to him he parked the motorcar there because he wanted to buy cigarettes from a store known as Tawakkal Store which was situated on the right side of Jalan Darulaman. The 1st defendant therefore had to cross from the left side of Jalan Darulaman to the centre cement divider and then from there he had to cross over to the right side of Jalan Darulaman to the store to buy the cigarettes. After the purchase he returned to his car, started it and moved it to the lane near to the cement divider because he said he wanted to make a U-turn at the place some 264 feet away in order to return to the Kedah Golf Club. When he moved his car out of the parking place he said he suddenly saw the plaintiff rushing out from a gap between 2 buses which were then parked at a bus-stop on the left side of Jalan Darulaman near to the Hospital. This bus-stop was almost directly facing the bus-stop on the right side of the road which the plaintiff had to catch his bus to take him home. The defendant went on to say that when he saw the plaintiff rushing out between the 2 buses he was about 3 to 4 feet away from the plaintiff. Although he was then driving about 20 m.p.h. and

did apply his brake, he could not avoid hitting the plaintiff.

It is almost always that in traffic accident cases which come before a court, the court is invariably faced with two conflicting stories. In such a situation a Judge has the unenvious task of deciding where and how the accident took place. The Judge must therefore put the oral evidence of the plaintiff and that of the defendant through a sieve in order to find the truth and also to discern from the documents any corroborative evidence in order to arrive at a correct decision. Doing the best I can from the oral evidence and the documentary evidence in this case, my findings are as follows. It is highly improbable that in order to buy cigarettes the defendant had to travel all the way from the Kedah Golf Club to the Tawakkal Store as stated by him. Surely there were many other stalls and shops on the way from the Kedah Golf Club to the said store from where he could have bought cigarettes. Moreover it is in evidence that there were some stalls on the left hand side of Jalan Darulaman near to the Hospital where he could have bought his cigarettes. It is to be noted that after purchasing the cigarettes he said that he proceeded along the left side of Jalan Darulaman close to the centre cement road divider in order to make a U-turn and then proceeded back to Kedah Golf Club. Surely the natural thing to do would be for him to make the U-turn and the stop at a small car-park in front of the Tawakkal Store to buy his cigarettes if he must get his cigarettes only from that store. I therefore hold that his story about stopping his car to buy cigarettes is highly improbable. I further hold that he was in fact at the material time travelling along on the left side of Jalan Darulaman at a speed which was quite unsafe for one to drive on a busy road like Jalan Darulaman. Notwithstanding his lie about stopping and buying cigarettes, his story about the plaintiff suddenly rushing out from a bus finds some support from the first information report which he made to the police after the accident. His report was made about an hour after the accident, (see page 1 of the Agreed Bundle of Documents). However in his testimony before this court the defendant gave a somewhat different version from that as stated in the first information report. In that report he said that when he arrived at the Hospital there was a bus waiting at the bus stop and that the plaintiff rushed out in front of that bus and encroached on to his path. In his evidence, however, he claimed that there were two buses at the stop and that the plaintiff rushed out from the gap between the two buses. He further added that he could not see the plaintiff because his view was blocked by the two buses. The discrepancy in his evidence may perhaps be excusable as it is not uncommon that a complainant would not in his first information report describe in detail all that took place at the accident. Furthermore the plaintiff's testimony did to a certain extent lend some support to the 1st defendant's story when he said that when he arrived at the Hospital he saw the bus which he wanted to catch had just arrived. It is quite probable that in his eagerness to catch that bus he hurried to cross the road hoping to be able to reach the centre cement divider although he did see the defendant's motorcar which at that time was about 132 feet away. Be it as it may, the road being a straight road the 1st defendant could have seen that the plaintiff was trying to cross the road and should have taken some precautionary measures to avoid the accident such as slowing down or warning the plaintiff. At any rate the 1st defendant did admit that at the material time there were many people near the bus stop on his side of the road.

In the circumstances I am of the opinion that in this case the 1st defendant is very much more to blame for the accident than the plaintiff since he was driving at an excessive speed along a busy road and he should have kept a proper look-out and should not relax his observation for the consequences could well be disastrous (see *Baker* v. *Willoughby*[1]). The need for him to be more careful applied particularly when he was passing a bus stop on his side of the road and there were many people embarking and disembarking from the two buses at the bus stop. I therefore apportion 70% liability to the 1st defendant and 30% to the plaintiff.

Assessment of the quantum of damages will be made on the basis of the percentage of liabilities of the respective parties.

Order accordingly.

Solicitors: *Baldev Bhar & Co.*